Guidance

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Issuing Solicitors Disciplinary Tribunal proceedings

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Status

This guidance explains the approach we take when deciding whether to issue proceedings in the Solicitors Disciplinary Tribunal.

Who is this guidance for?

All SRA-regulated firms and individuals

Consumers

Purpose of this guidance

We explain in this document the test that we apply when making decisions to issue proceedings against regulated individuals and firms before the Solicitors Disciplinary Tribunal (the Tribunal).

We investigate issues which represent serious breaches of our regulatory requirements. A matter may be serious either in isolation or because it represents a persistent failure to comply with our requirements. At the conclusion of any such investigation, we can decide to close the investigation, take regulatory action ourselves (for example by issuing a rebuke or a fine of up to £25,000) or issue disciplinary proceedings before the Tribunal.

This guidance should be read in the context of our decision making [https://www.sra.org.uk/sra/decision-making/decision-making-sra/?epiprojects=3] and other guidance documents. We will update these from time to time. Further details of our powers and our approach to enforcement can be found in our Enforcement Strategy and our Regulatory and Disciplinary Procedure Rules [https://www.sra.org.uk/solicitors/standards-regulations/regulatory-disciplinary-procedure-rules/] .

General

The Tribunal is an independent tribunal which has its own powers and procedures. It has some powers which we do not. In particular, it can prevent a solicitor from practising by suspending them indefinitely or for a fixed period, or permanently striking them off the Roll. It can also impose an unlimited fine. These powers are set out in Section 47 of the Solicitors Act 1974 and described in the Tribunal's guidance note on sanctions [https://solicitorstribunal.org.uk/resource/guidance-note-on-sanctions-10th-edition/] .

The Tribunal imposes disciplinary sanctions after making a finding of misconduct. A finding of misconduct is a finding that there has been a serious breach of our Standards and Regulations which apply to the individuals and firms that we regulate.

We bring proceedings before the Tribunal against solicitors and their employees. We also bring proceedings against registered European lawyers (RELs) and registered foreign lawyers (RFLs) regulated by us, firms, and their owners and managers.

Test for decision to issue proceedings

We have set out how we make decisions to bring proceedings before the Tribunal in our Regulatory and Disciplinary Procedure Rules. Rule 6.1 provides that we may make an application to the Tribunal where we are satisfied that:

- there is a realistic prospect of the Tribunal making an order in respect of the allegation; and
- it is in the public interest to make the application.

Realistic prospect test

The question whether there is a realistic prospect of the Tribunal making an order is an objective test. We need to consider whether an impartial and reasonable Tribunal hearing the case, properly directed and acting in accordance with the law, is more likely than not to make an order against the firm or individual.

To make an order the Tribunal will need to consider whether:

a. the conduct breaches our Standards and Regulations or meets the requirements for a control order;
b. on the balance of probabilities, the evidence proves the conduct alleged;
c. the conduct is serious enough for the Tribunal to make an order

a. Does the conduct breach our Standards and Regulations or meet the requirements for a control order?

We will consider whether the conduct breached our Standards and Regulations, or other regulatory requirements such as obligations set out in anti-money laundering legislation.

Where we serve notice on a person recommending their conduct be referred to the Tribunal, we will explain why we consider that they have breached their professional obligations and give them an opportunity to address our concerns. We will then consider the notice and the person's representations before making any decision to refer them to the Tribunal.

b. Does the evidence prove the conduct?

Before we decide to refer a matter to the Tribunal, we must be satisfied that we are able to prove the facts of what we allege happened. We will also consider what the firm's or individual's explanation and how that is likely to affect our view on that question.

In doing so, we will take into account the fact that the Tribunal applies the civil standard of proof when deciding whether any allegations have been found proved. In other words, the Tribunal will find conduct proved where it decides that it was more likely than not that it occurred.

In deciding whether there is enough evidence to meet the realistic prospect test, we will consider the evidence we have in our possession as well as any further evidence that we might need and can obtain. We will give appropriate weight to the evidence we have and consider whether it can be further strengthened.

Further, once proceedings have been issued, we may gather further additional evidence to deal with points raised by respondents in defence of the proceedings. We may carry out any such further investigations as we consider appropriate: Rule 6.2 of the Regulatory and Disciplinary Procedure Rules

If we do not consider the evidence to be strong enough to prove the facts alleged on the balance of probabilities, then we will not issue proceedings.

c. Is the conduct serious enough for the Tribunal to make an order?

Our assessment of seriousness is a key part of the realistic prospect test. We need to be satisfied that the matter is serious enough for the Tribunal to impose an order, sanctioning or controlling the individual or firm in question for their conduct.

Our Enforcement Strategy describes the various factors which we take into account to determine what makes a breach serious, including the

nature of the allegation as well as aggravating and mitigating factors.

We will consider whether, in order to address the risk to consumers or the need to send a signal to the firm or individual or others more widely, the case is likely to require a penalty which we would be unable to impose, but which the Tribunal is able to.

Therefore, we will consider, for example, whether any of the allegations against a solicitor would require them to be struck off the roll in order to protect consumers of legal services and maintain public trust and confidence in the solicitors' profession.

Where there is more than one allegation, we will consider the seriousness of each individual allegation and decide whether they all require a sanction, or whether one or more could be dealt with by using our internal powers. However, we do not need to be satisfied that each allegation, taken alone, is serious enough to warrant a referral where the allegations against the firm or individual, taken together, form a serious pattern of conduct.

Where we are considering concerns relating to a number of individuals or firms, we may decide that it is appropriate to ask the Tribunal to consider the whole case against one, or all, of the parties notwithstanding that some of the allegations could have been dealt with by using our internal sanctions. This is particularly likely to be the case where there is a material dispute about the facts between the different parties.

Public interest test

To maintain standards and uphold public confidence in the solicitors' profession, it is important that serious misconduct is met with an appropriate and proportionate regulatory response.

Where we consider there to be a realistic prospect of the Tribunal making an order in respect of any allegations made, there is a strong public interest in us referring the matter to the Tribunal for an appropriate sanction to be imposed.

In appropriate cases it will also be in the public interest for:

- Matters to be heard at a public hearing, for example, to promote public confidence and accountability. This might be the so where the case concerned raises particularly serious, new or unusual issues.
- The facts to be determined at a hearing: There may be a need to resolve material disputes over the facts, or to test the evidence, through oral evidence from the regulated person or witnesses. This is likely to be required where the matter turns on the credibility of a witness. This will also be the case where the regulated person's state of mind is key to the case, in situations for example where dishonesty has been alleged.

However, there may be rare occasions, when we decide that the public interest weighs against referring a matter to the Tribunal, even where we consider there to be a realistic prospect of the Tribunal making an order. Factors we are likely to take into account. may include:

- The proportionality of issuing proceedings, bearing in mind the length of time that has elapsed between the misconduct and the date of making the decision to issue proceedings. We will take into account the reason for any delay and whether, for example, this has been caused in part by the firm or individual, and/or whether the matters have only recently come to light.
- Whether the regulated person is currently suffering from mental or physical ill health such that proceedings would have a seriously harmful effect on their health or would impact on the person's right to a fair hearing.

Further help

If you require further assistance, please contact the Professional Ethics helpline [https://www.sra.org.uk/contactus/] .